

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS,

Petitioner,

v.

NORTHERN WARREN COUNTY
AMBULANCE DISTRICT,

Respondent.

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Public Case No. R 98-003

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of International Association of Firefighters (hereinafter referred to as the Union) to represent certain employees of the Northern Warren County Ambulance District (hereinafter referred to as the District). The Union seeks to represent a bargaining unit of all full-time paramedics and EMTs but excluding the district administrator, assistant district administrator and all part-time employees. A hearing on the matter was held on September 16, 1997 in Warrenton, Missouri, at which representatives of the Union and the District were present. The case was heard by State Board of Mediation Chairman Francis Brady and Employer Member Lois VanderWaerdt. At the hearing the parties were given full opportunity to present evidence and make their arguments. Afterwards, the parties filed briefs. The case transcript and briefs were subsequently supplied to Acting Chairman Ronald Miller and Employee Member Patrick Hickey, who both participated in the Board's decision. After a careful review of the evidence and arguments of the parties, the Board sets for the following Findings of Fact, Conclusions of Law, Order, and Direction of Election.

FINDINGS OF FACT

The Northern Warren County Ambulance District provides emergency medical service to individuals within the District's boundaries. This happens as follows. Emergency calls from citizens are received by a central dispatch facility which relays the pertinent information to the District. An ambulance crew from the District then responds to the call and provides whatever patient care or patient transport is necessary. The District operates 24 hours a day year round.

The District has a board of directors which has overall authority over its operation. The members of this board are elected from various areas of the county. The board makes policy for the District and approves all hirings and firings. Board members do not oversee employees on a day to day basis however.

Apart from this board of directors, the District's organizational structure is as follows. The District's highest ranking employee is the district administrator. He reports to the board of directors. Below him is the assistant district administrator. Underneath him are the District's paramedics and emergency medical technicians (hereinafter EMTs). There are 15 full- time paramedics and EMTs (not counting the district administrator and assistant district administrator). There are also 11 individuals who work for the District on an as-needed basis. These individuals, who are known as PRNs, will be discussed later. There are no employees underneath the paramedics and EMTs in the District's organizational structure.

The job duties of the individuals just referenced will now be reviewed. The district administrator(Ralph Hellebusch) is in charge of the day to day operations at the District, its administrative functions, and all employees (both full-time and PRNs). The assistant district administrator (Michael Witte) assists Hellebusch with these tasks. The paramedics and the EMTs (both full-time and PRNs) serve on the ambulance crews that respond to the emergency calls which are received. They all perform emergency medical treatment work. Hellebusch and Witte sometimes serve on an ambulance crew.

The paramedics and EMTs (both full-time and PRNs) perform their emergency response work in accordance with a detailed set of rules, regulations and policies which specify how they are to respond to a variety of situations. All are licensed by the state. All paramedics and EMTs (both full-time and PRNs) are required as a condition of employment to have a current state emergency medical technician (EMT) license. This is the basic license. If an EMT wants, they can become certified as a paramedic and obtain a paramedic license. Thus, a paramedic has more training than an EMT. All of the District's full time employees except one have a paramedic license. Some of the PRNs have a paramedic license but most do not. Both Hellebusch and Witte have a paramedic license.

The District has two stations from which it operates four ambulances. One station is located in Warrenton and one is located in Wright City. The Warrenton station is the main facility and the District's administrative offices are located there. Two employees are needed to operate an ambulance. The full-time employees at the Warrenton station work 24 hour shifts. The full-time employees at the Wright City station do not work 24 hour shifts; they work 10 hour shifts. The full-time employees at the Warrenton station eat, sleep, and live at the station when they are on their shift. The full-time employees at each station perform daily work routines and can trade (work) shifts.

In August, 1997, the District designated three of the full time employees as shift supervisors: Kevin Box, Ellen Freymuth and Tim Flake. The Employer considers them to be in charge of their shift and the activity that occurs therein. They ensure that the daily house duties are done and that the ambulances are checked. Other than that, these three employees perform the same job duties as the other (full-time) employees. Insofar as the record shows, these three employees are not powered to hire, fire, discipline, promote, evaluate, or transfer employees on their own volition. The only area among those just listed where they have made a recommendation is hiring. On two occasions, they have recommended that certain job

applicants be hired. When this happened, their recommendations were not binding. The record indicates that when the Employer fills positions, all full-time employees can make recommendations concerning who to hire.

Attention is now turned to the PRNs. The status of some of these individuals is in issue herein. The initials "PRN" stand for "as needed". The PRNs have their primary employment elsewhere, but have advised the District they can work for the District on an as-needed basis. As previously noted, when they work for the District they perform the same emergency medical treatment work as the full-time employees do. While the full-time employees respond to emergency calls from the station, the PRNs usually respond to emergency calls from their homes. Consequently, the PRNs usually return home after making the call; they do not return to the station. Unlike the full-time employees, the PRNs do not have a regular work schedule or work a set number of hours each month. Some PRNs work more than others. The amount of time they work for the District depends on the number of times they are called to work. Some PRNs can go weeks or months without working for the District. There are some weeks where no PRNs are called to work. When they are called though, this is how it happens. If a PRN is needed, a dispatcher at the central dispatch facility or someone from the District goes down the list of PRNs, calls one, and tells them there is an emergency call and its location. The PRN then decides if they can accept the work assignment. They can reject the opportunity to work for the District if they wish. The PRNs are not in pay status when they receive these calls asking them to work. In other words, they are not paid anything to wait at home for such a call to come. The District uses PRNs to fill staffing gaps or as backup under the following circumstances. First, they are used when all the full-time employees are out of the stations on calls. When this happens, the District sometimes has a PRN come into the station and wait for the next emergency call. Second, on some occasions, a PRN volunteers to come into a station and stay there for the entire shift. When this happens, the PRN is paid \$1.00 per hour for all

time spent at the station and is paid their regular rate for time spent responding to emergency calls. Third, although it does not happen frequently, PRNs are sometimes used to fill in for full-time employees who are off work due to illness, holidays, or vacations. When this occurs, the PRN works for the entire shift and is paid their regular rate for the entire shift. When a PRN works with a full-time employee, they work together, eat together, and sleep at the same facility.

The District's records indicate that the PRNs collectively worked a total of 412 hours in 1995, 513 hours in 1996, and 453 hours as of July 26, 1997.¹ The 1997 hours can be broken down as follows: Dieckman had worked 146 hours, Hellebusch 127 hours, Gibson 94 hours, Hoeltge 37 hours, Faust 27 hours, Jennings about 12 hours, Kramer 6.5 hours, and Determan 2.5 hours. PRNs Box, Stewart, Rotach, and Woods were added to the District's PRN call list in the last few months. The record does not indicate how many hours they have worked since then.

The full-time employees receive health and life insurance, retirement benefits, vacation, personal and sick leave; the PRNs do not. The PRNs and the full-time employees receive the same educational benefits. The PRNs and the full-time employees also receive the same holiday pay.

The starting wage is \$5.50 per hour for an EMT and \$6.65 per hour for a paramedic. The PRNs are not paid more than the starting rates just identified. The full-time EMTs and paramedics are paid a variety of rates ranging from \$6.65 to \$10.00 per hour. Box makes \$7.65 per hour, Freymuth makes \$9.00 per hour and Flake makes \$6.75 per hour.

Traditionally, the District hires full-time employees from the ranks of its PRNs. Eight of

¹ The following explanation is offered concerning the figure just referenced. Union Exhibit 4 puts the 1997 hours at 631 while Employer Exhibit C puts it at 453. The difference in these figures is attributable to the fact that the Union's figure includes Michael Witte's hours and the Employer's figure does not. Witte worked 177 hours as a PRN in 1997. We have used the District's figure of 453 because Witte is now a full time employee.

the District's current full-time employees were once PRNs.

CONCLUSIONS OF LAW

International Association of Firefighters has petitioned to be certified as the exclusive bargaining representative for a unit of all full-time paramedics and EMTs employed by the District.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo. 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

In this case, there is no dispute per se as to the appropriateness of a unit of paramedics and EMTs. The only question which has been raised by the District regarding the composition of such a unit concerns the status of certain PRNs and whether they qualify as regular part-time employees. Their status will be addressed below. Our finding concerning their status will be dispositive of whether the PRNs in question are in or out of the paramedic/EMT unit. With this caveat, we hold that in the context of this case, a unit of full-time and regular part-time paramedics and EMTs in the Northern Warren County Ambulance District is an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

We begin our discussion by first addressing which PRNs are in question. At the hearing, the District's position was that all of the PRNs should be included in the bargaining unit with the full time employees. Since there were 11 individuals on the District's PRN call list as of the date of the hearing (Employer Exhibit B), this meant that the District was seeking to include 11 PRNs in the unit. In their brief though, the District changed its position concerning the number of PRNs it was seeking to include in the unit. It now proposes that just those PRNs who average four or more hours per week be included in the unit. Although the District did not identify who those individuals were, Employer Exhibit C clearly indicates that just three PRNs average four or more hours per week in 1997. Those three individuals are Danielle Dieckman, Marcha

Hellebusch, and Andrew Gibson. All the other PRNs average less than four hours per week. We therefore understand the District to now be seeking just the inclusion of PRNs Dieckman, Hellebusch, and Gibson in the unit with the full time employees. Since the District is now seeking to include only those three PRNs, this means that neither side is proposing the inclusion of the other eight individuals on the District's PRN call list. That being so, those eight individuals are excluded from the unit no matter what we decide concerning the status of Dieckman, Hellebusch, and Gibson.

At issue then is whether the three PRNs just noted are regular part-time employees or casual employees. The District contends they are the former while the Union asserts they are the latter. The distinction is important because regular part-time employees are considered to have a community of interest with the full-time employees while casual employees do not. Thus, regular part-time employees qualify for unit inclusion and casual employees do not.

All the PRNs (including the three in issue) have the following characteristics in common. First, they only work on an as-needed basis. As a result, they work irregularly in that none have a regular work schedule or set hours of work. Second, all are essentially on-call for the District at any time of the day or night. Third, when they are called to work, they have the ability to reject the assignment if they wish.

The characteristics which have just been identified are common characteristics of casual employees. That being the case, if we were deciding here whether the PRNs as a class are casual or part-time employees, we would have to categorize them collectively as casual employees. However, we are not being asked to decide whether the PRNs as a class are casual employees. Instead, the District has carved out a small number of the PRNs (namely those who average four or more hours per week) and asked that they be included in the unit as regular part-time employees. As previously noted, the record indicates there are just three employees who average four or more hours per week: Dieckman, Hellebusch, and Gibson.

There is a significant difference in the number of hours worked by the PRNs. Simply put, three of them work far more than the rest. The following shows this. As of July 26, 1997, Dieckman, Hellebusch, and Gibson had worked 146, 127, and 94 hours, respectively. None of the other PRNs comes close to these figures. The next closest is PRN Hoeltge with 37 hours. From there, the number of hours worked by the PRNs drops to 27, 12, 6.5, and 2.5. The last three numbers are so low that these PRNs average less than one hour a week. Since Dieckman, Hellebusch, and Gibson have worked significantly more hours than the other PRNs, we find it appropriate under the circumstances to categorize them as regular part-time employees instead of casual employees. They are therefore included in the unit with the full-time employees. The other eight individuals on the District's PRN call list are excluded from the unit because they are casual employees.

Finally, although the Employer did not reference the matter at all in their brief, at the hearing the Employer seemed to raise the contention that Box, Freymuth, and Flake were supervisors. In the interest of completing the record, we have decided to address the status of those individuals.

While supervisors are not specifically excluded from the coverage of the Missouri Public Sector Law, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d(Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Case No. 76-013 (SBM 1976). This rationale for the exclusion is that supervisors do not have a community of interest with, and therefore are not appropriately included in a bargaining unit comprised of, the employee they supervise. This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise.

This Board has traditionally used the following indicia to determine supervisory status:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;

- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
- (3) The number of employees supervised and the number of other person exercising greater, similar and lesser authority over the same employees;
- (4) The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
- (5) Whether the person is primarily supervising an activity or primarily supervising employees; and
- (6) Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.²

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.³

Applying these criteria to the three individuals, we conclude they do not meet this supervisory test. Our analysis follows.

To begin with, the three individuals play no meaningful role in personnel decisions. The following show this. Insofar as the records shows, they have not done most of the procedures listed in factor (1) above. Specifically, they have not fired or disciplined anyone, or promoted, evaluated or transferred anyone. Additionally, they have not effectively recommended any of the foregoing procedures.

The only procedure listed in factor (1) which they have arguably been involved in is hiring. Although the three employees have never hired anyone on their own volition, they have twice made hiring recommendations. These recommendations were not binding. Additionally, these recommendations were not unique because all full-time employees were able to make

² See, for example, City of Sikeston, Case No. R 87-012 (SBM 1987).

³ See, for example, Monroe County Nursing Home District, d/b/a Monroe Manor, Case No. R 91-016 (SBM 1991).

such recommendations.

Another factor influencing our decision concerns the level of pay, criteria (4) above. While Freymuth and Box are among the highest paid employees in the unit, Flake makes just \$.10 an hour more than the three lowest paid full-time employees in the unit. We are hard pressed to find that Flake supervises employees when most of the employees in the unit earn more than he does.

The foregoing convinces that Box, Freymuth, and Flake are leadworkers who oversees the work activity performed on their shift. Overall, they have not been given sufficient supervisory authority in such combination and degree to warrant excluding them from the unit as supervisors. They are therefore included in the unit.

ORDER

The State Board of Mediation finds as follows:

- (1) That a unit of all full-time and regular part-time paramedics and EMTs in the District is appropriate.
- (2) That PRNs Dieckman, Hellebusch, and Gibson qualify as regular part-time employees while the other individuals on the District's PRN call list do not. Accordingly, PRNs Dieckman, Hellebusch, and Gibson are included in the unit.
- (3) Full-time employees Box, Freymuth, and Flake are not supervisors. They are therefore included in the unit.
- (4) An election is ordered in the unit just referenced.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees

who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have the International Association of Firefighters as their exclusive bargaining representative.

The District shall submit to the State Board of Mediation, as well as to the Union, within fourteen calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 6th day of January, 1998.

STATE BOARD OF MEDIATION

/s/ Ronald J. Miller
Ronald J. Miller, Acting Chairman

(SEAL)

/s/ Lois VanderWaerd
Lois VanderWaerd, Employer Member

/s/ Patrick Hickey
Patrick Hickey, Employee Member